IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA.No. 820 of 2001

OPMV.1755/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/PETITIONER:

RAMACHANDRAN, S/O KOCHUKRISHNAN,
AINIKUNNATH HOUSE, VALOOR,
P.O.PUTHANPEEDIKA, ANTHIKKAD,
THRISSUR DIST.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1. N.G.SHABU, S/O GANGADHARAN,
   NELLIPARAMBIL HOUSE,
   PERINGOTTUKARA P.O., TRICHUR DIST.

2. THE OREINTAL INSURANCE CO. LTD.
   T.D.BUILDING, P.B.NO.158, ROUND
   WEST, TRICHUR.

R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 820 of 2001

JUDGMENT

Koshy, J.

The appellant/claimant, while pedelling a cycle, the lorry driven by the first respondent, insured by the second respondent Insurance company, hit him, as a result of which he suffered serious injuries. He claimed a compensation of Rs.2,24,500/-. The total compensation awarded was only Rs.90,000/-. The Tribunal found that the accident occurred due to the negligence of the first respondent. As the vehicle was covered by a valid insurance policy, the Insurance Company was directed to deposit the amount. The quantum of compensation alone is disputed in this appeal. Therefore, we are considering only the same.

2. The appellant was a toddy tapper. He produced Exhibit A10 salary certificate issued by the Welfare Fund Inspector of the State, as he was

a member of the Kerala Toddy Tappers' Welfare Fund Board. It shows that his yearly income was Rs.23,545/- for the year 29.8.1998 to 31.3.1999 (seven months). Therefore, according to the claimant, his monthly income was Rs.3,364/-. The Tribunal has taken only Rs.2,000/- as the monthly income for calculation of compensation. We are of the opinion that considering the salary certificate, which is issued by a State Functionary at least Rs.3,000/- can be fixed as the monthly income for the purpose of calculation of compensation. With regard to the injuries, Exhibit A7 disability certificate, issued from the Medical College Hospital, certified as follows:

> "Clinical and radiological examination showed following findings.
>
> 1. Compound communited segmental fracture of right femur.
> 2. Distal radial fracture on right side.

The patient was initially taken to Mother Hospital (P) Ltd. and later came to Medical College Hospital, Thrissur.

He was trated as inpatient with IP No.5004 from 26.3.1999 to 30.4.1999. The distal radial fracture was treated by plaster immobilisation for one month. The Femoral fracture was treated by wound dibridement and upper tibial skeletal traction followed by open reduction and internal fixation (K/Nailing) of the fracture and bone grafting under anaesthesia on 17.4.1999. The patient was discharged in a groin toe cast as the fixation of the fracture was loose. The cast was removed on 14.6.1999. The patient continued treatment as outpatient. he was advised partial weight bearing using crutches from 13.12.1999. The patient reported OPD on 18.2.2000 with crutch palsy-High radial nerve palsy of left upper limb. The patient is still continuing treatment as OP.

I have examined him today and found to have following problems.

1. clinical and radiological evidence of united fracture of right femur. X-ray (right) femur dated 28.6.2000 shows unconsolidated fracture of femur. There is also evidence of fracture malunion by 25 valgus angulation. Femoral segment of right lower limb shortened by one inch. The patient has to wear crutches till the fracture is consolidated well.

2. Partial ankylose of right knee with motion limited to arc from 180 line to 45 flexation.

3. Requirement of future operation like bone grafting and implant removal.

4. In future he will not be able to continue his work as a toddy tapper.

5. The crutch palsy has partially recovered and the left upper limb is having grade 4 weakness of radial nerve innervated muscles.

> Considering the above factors the persons is having permanent disability of 20% (twenty percent) as per MC Bride Scale."

Before the Tribunal, he was examined in August, 2000. Even at that time, 6½ years after the accident, the Tribunal noticed the following:

> I had occasion to see the petitioner on the date of the trial. At present he has the following visual disabilities. There is slight shortening to the right leg and there is wastage of muscle to the thigh. The flexation of the knee is also limited."

However, hoping that after removal of implants there may be perfection of disability. The Tribunal did not accept the disability certificate. But, on a rough and sum basis Rs.35,000/- was awarded as compensation for disability. We are of the view that there was no reason to disbelieve the evidence

of the doctor, when the Tribunal itself found that at the time of examination before it there was shortening of right leg, wastage of muscle and limitation of flexation of the knee. If the compensation is calculated at the multiplier method, compensation payable will be 3000 x 12 x 13 x 20/100 = 93,600. After deducting Rs.35,000/- granted by the Tribunal, the balance will be Rs.58,600/-. For loss of actual earning during the time of the accident, the Tribunal has granted compensation for nine months and taking Rs.2,000/- as the monthly income, Rs.18,000/- was granted. Here, we have fixed the monthly income as Rs.3,000/-.Therefore, he will get an additional amount of Rs.9,000/- on that count. It is submitted that for medical expenses, for by-standers expenses and for extra nourishment altogether the Tribunal has granted only Rs.5,000/-. We are of the opinion that Rs.1,400/- can be granted for the above heads. Thus, the

claimant will be entitled to an additional amount of Rs.69,000/- over and above the amount awarded by the Tribunal. The above amount of Rs.69,000/- shall be deposited by the Insurance Company with 7% interest per annum from the date of application till its deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is allowed in part.

(J.B.Koshy, Judge)

13th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.820 of 2001

JUDGMENT

13th June, 2007